

**CITY OF NORTHAMPTON BOARD OF HEALTH REGULATION OF MARIJUANA  
ESTABLISHMENTS AND THE SALE OF MARIJUANA**

**A. Statement of Purpose and Authority:**

Whereas, Massachusetts voters approved the regulation of the use and distribution of marijuana not medically prescribed on November 8, 2016 pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Marijuana; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and

Whereas, local oversight and inspection of marijuana establishments is within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas the Massachusetts Supreme Judicial Court had held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means.”

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all Northampton’s residents and pursuant to the authority granted to it pursuant to M.G.L. c. 111, §31, the Northampton Board of Health enacts a Regulation to Ensure the Sanitary and Safe Operations of Marijuana Establishments and the Sale of Marijuana in the City of Northampton as follows;

**B. Definitions:**

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CRM 500.000 and in General Law, Chapter 94, §1.

In addition, for the purposes of this regulation, the following words shall have the following meanings:

Board: City of Northampton Board of Health

Board of Health Agent: The Director of Northampton Health Department and any City employee designated by the board of health, which may include health department staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent: An individual who has been designated by the owner or operator of any marijuana establishment to be the manager or otherwise in charge of said establishment.

Edible Marijuana Products or Edibles: A marijuana product that is to be consumed by humans by eating or drinking.

Identification: A driver’s license, U.S. Military ID, Passport, or other government issued identification which displays a photograph and a date of birth of the bearer

**Marijuana:** All parts of any plant of the genus cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws.

“Marijuana” shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; hemp; or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

**Marijuana Accessories:** Equipment, products, devices or materials of any kind that are intended or designed for use in ingesting, inhaling or otherwise introducing marijuana into the human body.

**Marijuana Establishment:** A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business licensed by the Cannabis Control Commission pursuant to 935 CMR 500.050 as a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent marijuana testing laboratory, storefront marijuana retailer, delivery-only marijuana retailer, marijuana primary social consumption establishment, marijuana mixed-use social consumption establishment, marijuana research facility, marijuana transporter and marijuana micro-business.

**Marijuana Products:** Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

**Marijuana Retail Establishment:** A permitted entity by the Northampton Board of Health authorized to sell marijuana to consumers and in which the entry of persons under the age of 21 is prohibited at all times. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on premise consumption.

**Marijuana Edible Manufacturer:** An operation that prepares, packages, serves, vends or otherwise provides marijuana edibles for human consumption.

**Marijuana Product Permit Holder:** Any persons engaged in the sale or distribution of marijuana products directly to consumers, who applies for and receives a Marijuana Retail Establishment Permit.

**Minimum Legal Sales Age:** The age an individual must be verified to be 21 or older before that individual can be sold a marijuana product.

**Non-Residential Roll-Your-Own (RYO) Machine:** A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual’s own personal consumption or use) that is can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

**Operating Permit Holder:** Any person engaged in the sale, distribution or delivery of marijuana or production of edibles who applies for and receives an operation permit, or any person who is required to apply for an operation permit pursuant to these regulations, or his or her business

agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Self-Service Displays: Any display from which customers may select marijuana or a marijuana-infused product without assistance from an associate.

Tobacco and Nicotine Delivery Product Permit Holder: Any person engaged in the sale or distribution of tobacco or nicotine delivery products directly to consumers who applies for and received a Tobacco and Nicotine Delivery Product Sales Permit.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

**C. Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited:**

1. The minimum legal sales age in the City of Northampton is 21. No person shall sell marijuana or permit marijuana, as defined therein, to be sold to a person under the minimum legal sales age of 21; or give marijuana products as defined herein, to a person under the minimum legal sales age of 21.
2. Each person selling or distributing marijuana products as defined herein, shall verify the age of every purchaser **during each** transaction by means of a valid government-issued photographic containing the bearer's date of birth that the purchaser is 21 years of age or older
3. All retail sales of marijuana products shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of adult-use marijuana products is authorized and licensed under state regulation and then, in strict compliance with all applicable rules and regulations as well as the age limitation set forth herein,

**D. Marijuana Operating Permit:**

No person shall sell or distribute marijuana product to the public, deliver marijuana products to the public and/or prepare edibles as defined herein, within the City of Northampton without first obtaining a Marijuana Operating Permit issued annually by the City of Northampton Board of Health. Only owners of establishments with a permanent, non-mobile location in the City of Northampton are eligible to apply for an operating permit at the specified location in the Northampton except:

1. All applicants shall certify that they are in compliance with all local and state laws, regulations or ordinances and be prepared to show proof if requested.

2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other product.
3. No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with the Northampton Board of Health Regulation of Marijuana Establishments and the Sale of Marijuana. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales regarding federal, state and local laws regarding the sale of marijuana and this regulation.
5. Each applicant who sells, delivers or otherwise distributes marijuana is required to provide proof of a current license issued by the Cannabis Control Commission before a Marijuana Operating Permit can be issued.
6. A separate Marijuana Operating Permit, displayed conspicuously, is required for each marijuana establishment. The fee for which shall be determined by the Board annually.
7. A Marijuana Operating Permit is non-transferable. A new owner of a marijuana establishment must apply for a new permit.

Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to unannounced, periodic inspection of his/her marijuana establishment, including any business conducted off-site, to ensure compliance with this regulation.

9. A Marijuana Operating Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
10. A Marijuana Operating Permit will be revoked or subject to non-renewal if the establishment has sold a marijuana product to a person under the minimum legal sales age three times. The permit holder may request a hearing pursuant to this regulation prior to non-renewal.
11. No person under the minimum legal sales age shall be permitted to enter an establishment with a Marijuana Operating Permit except those individuals in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program if the establishment is co-located with a medical marijuana treatment center.
12. A retail marijuana establishment shall only sell marijuana and marijuana accessories. A retail marijuana establishment is prohibited from applying for or otherwise holding a

tobacco sales permit. A retail marijuana establishment is also prohibited from holding a liquor license or selling or distributing any alcoholic beverage in any form.

13. All Marijuana Operating Permits expire annually on December 31<sup>st</sup>.

**E. Incorporation of 105 CMR 500.000 and 105 CMR 590.000:**

The manufacture of all edible marijuana products and food products containing marijuana shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. Marijuana establishments and agents shall comply with 105 CMR 500.000, “Good Manufacturing Practices for Food” and 105 CMR 590.000, “Minimum Sanitation Standards for Food Establishments” relative to edible marijuana products.

**F. Incorporation of 935 CMR 500.00:**

Marijuana establishments and agents shall comply with 935 CMR 500.000.

**G. Out-of-Package Sales:**

The sale or distribution of edible marijuana products in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any edible marijuana product for retail sale.

**H. Self-Service Displays:**

All self-service displays of marijuana products are prohibited.

**I. Vending Machines:**

All vending machines containing marijuana products are prohibited.

**J. Marijuana Accessories:**

Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores as defined herein.

**K. Compliance with All Laws:**

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, but not be limited to compliance with food service permit requirements, secondhand smoke regulations, electronic cigarette regulations, nuisance laws and all requirements associated with zoning and other local permitting.
2. The cultivation, processing, manufacturing, delivery, sale and use of marijuana shall not exempt any person or entity from complying with all state and local laws, ordinances,

bylaws, regulations and policies. Violation of any other such law shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.

3. The Northampton Board of Health may require the distribution of additional educational materials in marijuana establishments.

**L. Enforcement and Penalties:**

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Northampton Board of Health, its designees and the Northampton Police Department.
2. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Board and its designees. Unscheduled compliance inspections shall be conducted at a minimum of two inspections annually.
3. It shall be the responsibility of the Marijuana Operation Permit holder and/or business agent to ensure compliance with all applicable sections of this regulation. Any marijuana establishment found to be in violation of the provisions of these regulations may receive a written warning citation, a fine, a Marijuana Operation Permit suspension, or a Marijuana Operation Permit revocation.
4. Any permit holder or any person or entity charged with violation of any provision of this regulation shall receive a notice of violation from the Northampton Board of Health or its designated agent. Unless waived by the permit holder, the Board of Health shall conduct a hearing to determine the facts of the violation, the appropriate corrective actions, the terms of suspension, if any, and/or issue a permit revocation order.
5. Prior to issuing any suspension or revocation, the Health Department shall provide notice of the intent to suspend or revoke a permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than 7 days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Northampton Board of Health may suspend or revoke the permit if the Board of Health finds that a violation of this regulation occurred.
6. Whoever violates any provisions of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws Chapter 40, Section 21D.
7. If a single violation were to exist for more than one day, said violation shall be deemed to be a separate offense.

**M. Violations:**

It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of marijuana products. Violation of this regulation will result in the permit holder incurring the penalties outlined below:

1. First Violation - a fine of \$     and a sales permit shall be suspended for 7 consecutive business days
2. Second Violation - a fine of \$     and the sales permit shall be suspended for 30 consecutive days
3. Third Violation – The Board shall permanently revoke the sales permit

In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of marijuana products directly to a consumer while his or her permit is suspended shall constitute a separate violation of this regulation and may be subject to revocation of the marijuana sales permit.

**N. Variances:**

1. A variance from this regulation shall be requested in writing to the Northampton Board of Health. A variance may be granted by the Northampton Board of Health after a hearing at which time the applicant establishes the following:
  - a. Strict enforcement of this regulation would do manifest injustice; and
  - b. The granting of a variance shall not in any way impair the public health and safety or the environment.
2. The Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

**O. Severability:**

If any provision of this regulation is declared invalid or unenforceable, other provisions shall not be affected thereby but shall continue in full force and effect.

**P. Effective Date:**

This regulation shall take effect immediately upon passage by the Northampton Board of Health.